(2)

Stenographic Transcript Of

HEARINGS

Before The

UNITED STATES SENATE

WASHINGTON, D.C.

REYNOLDS REPORTING ASSOCIATES INC.

Official Reporters

1028 CONNECTICUT AVE., N.W., SUITE 1100 WASHINGTON D.C. 20036

833-3598

MARK-UP

CLEAN AIR ACT AMENDMENTS

- - -

MONDAY, MARCH 28, 1977

- - -

United States Senate,

Committee on Environment and Public Works,

Washington, D. C.

The committee met at 10:20 a.m., pursuant to recess, in room 4200, Dirksen Senate Office Building, Hon. Jennings Randolph (chairman of the committee) presiding.

Present: Senators Randolph, Muskie, Bentsen, Hart, Anderson, Stafford, Baker, Domenici, Chafee and Wallop.

Senator Randolph. Good morning to our guests and to the participants of today's discussion, members of the committee and staff.

We have, I believe, approximately seven or eight subjects that are still with us in one way or another. And I imagine that the matter of non-attainment should be left until last, hoping that we will have the presence of Lloyd Bentsen. I believe we have a promise to him to delay any actual action, to give him an opportunity to be present. But we can check that our and we will try to accommodate members who are coming into the city.

Senator Muskie. May I suggest, Mr. Chairman, in addition,

the language staff has developed for us to consider is just coming off the typewriter. And I think it would be just as well if members had 24 hours, at least, to study that language.

Senator Randolph. We will not move into that subject, then, today, with the concurrence, if it is agreeable with other members

Senator Stafford. That is fine.

Senator Randolph. Now, will staff bring us up to date on where we are as we begin this session.

Or will you, Ed, if you desire, as chairman of the subcommittee, bring this to our attention in the way of a beginning.

Senator Muskie. I think we had a time agreement on every amendment, and I wonder if the staff would bring them up one at a time, if the sponsors are present.

I assume No. 3, which is extension of deadline for sources in non-attainment areas, should be discussed later. So we would begin with any one of the next five -- environmental review board, modification of hazard, removal of prohibition against pre-sale [illegible] testing, auto NOx noncompliance penalty and pre-emption amendment. Those are the other five. We have taken care of high altitude emissions. So 2 and 3 we will leave to another time. And the last five are subject, I think, to a time agreement. Are they not?

Mr. Billings. Yes.

Senator Randolph. That was the time agreement. Remind me.

Mr. Billings. We have 20 minutes on Environmental Review Board, 10 minutes on notification of hazard, and 20 minutes on the last three. So 20 minutes on items 4, 6, 7 and 8, and 10 minutes on 1.

Senator Muskie. That is an hour-and-a-half if we observe the time limit. We may relax a little bit to be sure everybody can make their points. If we observe the time limit, we can finish this morning on these five.

Senator Randolph. We have a problem; I believe Senator Anderson is handling the pre-emption amendment. Is that correct?

Mr. Cummings. Yes.

Senator Randolph. Bob, I find you have, I believe, two. Is that correct?

Senator Stafford. I have one, Mr. Chairman.

Senator Randolph. Senator Hart, you have two, I believe.

Senator Hart. That is correct.

Senator Randolph. Do you wish to move into yours, Bob, or do you want her, to go ahead?

Senator Stafford. I would be willing to move into mine, if that is the pleasure of the Chairman.

Senator Randolph. I think that would be agreeable.

Senator Stafford. We will have copies of the amendment

passed out, and as soon as that is done, I will begin my 10 minutes.

Senator Randolph. As I understand, this is new subject matter.

Senator Stafford. Yes, sir.

Mr. Chairman, if everybody has a copy of the proposed amendment, it would be my intention, if the committee adopts the amendment, to place it at the end of Title I of the present act.

I think it fairly well speaks for itself. The 1970 Clean Air Act established primarily ambient air standards to protect public health. Such standards were to be achieved no later than this spring. The metropolitan areas still don't achieve those standards.

Action since 1970 by the Congress appears to make it likely that the standard will take even longer to achieve. Where such standards are not achieved, it is only reasonable to notify the public, and such notification may increase public support for continued progress toward the ambient air standard.

Now, Mr. Chairman, if Hal Brayman wishes to make further comments on this, I will invite him to do so.

Senator Randolph. Don't you decontrol it, now, Hal.

Mr. Brayman. I don't think I have anything to add. I think Senator Stafford made the points.

Senator Randolph. Further comments?

Senator Muskie. I think the idea has so much merit it might not be a bad idea to require automobile companies to clearly identify by model those cars which do not meet the standards required by the 1970 act. I won't offer that amendment at this point, but I don't know why somebody hasn't thought of this before, Senator Stafford.

Senator Randolph. Do you move it, Dob?

Senator Stafford. I move it.

Senator Randolph. We can move and have it ready.

Senator Stafford. I won't go further if there isn't discussion. I think I have only used one minute of the ten, Mr. Chairman.

Senator Muskie. I wish I could settle an amendment that easily.

Senator Domenici. This is without blaming anybody; you wouldn't want to put on it that some cities are to blame, were aren't; just really a notification and that is all?

Senator Stafford. That is all it is. I think our feeling would be if the shoe fits, let it be put on.

Senator Domenici. Sort of like cigarettes.

Senator Chafee. It would be right under the sign that says, "Lottery meets at 12:15." (Laughter)

Senator Randolph. You mean to say that is a pollution problem?

Senator Domenici. I so amend it. (Laughter)

Senator Randolph. Seriously, Bob, are you thinking of a certain size sign, certain wording of the sign? I think it is worthy of discussion a moment.

Senator Stafford. Mr. Chairman, we have left the size and text of the sign to the discretion of the administrator, except that such sign must comply with and be consistent with the Highway Beautification Act so there will be no violation of that act in our attempt to let the public know where hazardous air may exist.

Senator Randolph. May we have a second, please?

Senator Muskie. I will second it.

Senator Chafee. I will second it, without being bound to vote for it; I second it.

Senator Randolph. I think we better cross over and let a Democrat second a Republican motion, if that is all right with you, John.

Senator Muskie. This may be the only teeth we can get into the act.

Senator Stafford. Senator Hart seems to have a statement.

Senator Hart. At the risk of introducing a serious note here, this is a suggestion that the community is responsible. The sign is going to be outside the City of Denver, for instance. In some respects it is Denver's fault it has that problem. In many others it is Detroit's fault that Denver has that problem. I could see you get a sign that says, "Because of

the failure of the auto industry to meet their responsibilities to the people of the country. Denver has an air quality problem."

But it might be reasonable and responsible to say, "Due to stationary and mobile sources, you are entering a health hazard area."

I don't think it is Denver's fault, frankly, that Denver has an air quality problem. I think it is due to heavy industry lobbying on us and Congress and other things where we have managed to keep giving extensions and letting people off the hook year after year that Denver has that problem.

I would hate for people from Iowa or Vermont to come to Denver to think that the brown cloud is the fault of the Denver residence.

We have taken the industry off the hook once more by telling them they can sell cars in Denver which this year comply with high nitrogen standards and next year don't have to.

I don't think we can lay this problem at the steps of the people of Denver necessarily.

Senator Stafford. Would it not be possible, since we have not attempted to prescribe what the content of the sign should be, in report language to state to the administrator that something along the line that you suggested be on the sign?

Senator [illegible]. The is the failure of the Congress and the

into industry." That would satisfy me. (Laughter)

Senator Randolph. What about the Mafia moving into Colorado? The articles I have been reading --

Senator Hart. You have the wrong State. I won't mention which State it was, but it wasn't Colorado.

Senator Randolph. It wasn't the wrong State. I read all those articles, with Arizona as the pivot point, but they are moving into Colorado. It names the Mafia figures, and Denver is a hotbed now. This is true, if you have read all the articles.

I am not attempting to assess the articles. But you don't want to blame that on Denver per se, but it is centered in Denver.

Mr. Creighton. The way the language is drafted it would allow the administrator to accept a sign that a local community or State would choose as part of its program. It does not require a uniform special sign or anything else. The report language was so worded that Denver could prepare signs placing the plans on anyone if wanted.

Senator Tower. Would it say, "Despite the best efforts of Senator Dole --

Senator Randolph. I will vote for them.

Senator Dole. I am still trying to figure out what the Mafia has to do with this.

Senator Randolph. It had a very real reason. I can be

serious in the discussion here. You were simply saying that Denver was not to fault. Well, Denver per se is not at fault with the Mafia moving into Denver, which, according to all the articles -- and I will be glad to have you read them -- they are part of the organized Arizona story, as the center now of a ring that is moving in with several types of drugs, mentioning the movement into Denver and the fact that it is becoming the second or third capital for the illegal movement of narcotics from Mexico. All of that is contained in the article.

So I would have to say that there was not a flight of fancy on my part when I mentioned you don't want to blame, let's say, Denver for that situation any more than you want to blame Denver for a pollution situation that has to do with the failure of having to have an ambient air quality.

It was an illustration of what can clamp onto a city, one type of pollution as against another.

Senator Muskie. Finally, there is a serious point here that needs to be raised. The purpose of this amendment, as I see it, is not to assess blame on anybody but to alert the public in very specific terms that there still is a problem, notwithstanding whatever the public has been exposed to by way of propaganda or advertising or arguments or debates, that there is a continuing problem.

And this problem exists when they drive into city "X" -- whether it is Denver or more than Denver -- on the wrong kind

of a day, they can encounter a health problem.

Now, hopefully, the public would be stimulated, then, to inquire as to why there is a health problem, what are its causes, what, if anything, they can help do about it. That is the point.

It is very difficult for this committee or anybody else in the Congress concerned with the existence of this problem. There is no way of advertising. We can't travel around the country now to alert people to problems of this kind, so we have to depend on some other way of doing it.

This may, at first blush, seem like a frivolous way, but looking to the real point of it, I don't think it is a bad idea at all. I think it is, from the serious point of view, a good idea and not designed to blame anybody.

One could argue about who is responsible for the fact that too many [illegible] still smoke cigarettes, or whatever other dangers. We label all kinds of things that are harmful.

Senator Randolph. Or [illegible] drugs.

Senator [illegible]. Or a lot of other things. Maybe this isn't a bad way of alerting people to the fact.

Even in Washington last [illegible] we had the eight worst [illegible] in the history of the city. Now, on those [illegible] [illegible] the city, particularly if they have [illegible] [illegible] have respiratory diseases, are [illegible] [illegible] [illegible]. Why shouldn't they be warned?

And, if they are, wouldn't this raise questions in their mind? I would always favor mandating that the signs be colored red. Although I won't go that far because we don't want highway beautification to suffer.

But in any case, I think there is a serious point to offer here, though it may seem frivolous. That is not my reaction at this moment. I accepted it for serious reasons.

Senator Randolph. Sir, I want to make a comment. And in doing it, I will mention not several States, except to say several states, but I will be frank enough to mention West Virginia where, as you move in toward a community, sometimes that community has its own government and sometimes it has no mayor or city council or what-not.

You have down in Maine, perhaps. They are communities, but there is no constituted government in that area. And yet landing into that community, you will find a sign, "Water unsafe for drinking."

That is exactly what it says, nothing more; "Water unsafe for drinking."

That is what you are really doing here. It is an alert, isn't it? And those persons that come in, they see the sign and they then are inquiring, as you have indicated, if it is a matter of concern or not a matter of concern.

But I think the amendment is well positioned. I want to support it.

Senator Stafford. Thank you, Mr. Chairman. We have eight members here at the moment. If there is no further debate --

Senator Randolph. Will you call the roll, please.

Mr. Yago. Senator Anderson? Senator Baker?

Senator Baker. Aye.

Mr. Yago. Senator Bentsen?

Senator Randolph. Aye, by proxy.

Mr. Yago. Senator Burdick? Senator Chafee?

Senator Chafee. No.

Mr. Yago. Senator Culver?

Senator Hart. Aye, by proxy.

Mr. Yago. Senator Domenici? Senator Gravel?

Senator Randolph. No, by proxy.

Mr. Yago. Senator Hart?

Senator Hart. Aye.

Mr. Yago. Senator McClure? Senator Moynihan? Senator Muskie?

Senator Muskie. Aye.

Mr. Yago. Senator Stafford?

Senator Stafford. Aye.

Mr. Yago. Senator Wallop?

Senator Wallop. Aye.

Mr. Yago. Senator Randolph?

Senator Randolph. Aye.

Senator Hart. Senator Anderson, aye, by proxy.

Mr. Yago. Senator Domenici?

Senator Domenici. Aye.

Mr. Yago. Yes to two.

Senator Randolph. The amendment carries, understanding those who were not present would have the opportunity to vote.

Gary, you have, I believe, two amendments.

Senator Hart. Section 209 of the current statute prevents a State from developing inspection programs for new automobiles. This amendment would permit that restriction to remain in existence but would add a new section which qualified it somewhat. The language you have before you.

Essentially what it would do is permit a State to provide for inspection programs for emissions of new automobiles. The existing section in the law was designed to prohibit States from setting standards for new cars different from the national standards, and thereby attempting to preclude the State from establishing standards which require design modifications for engines and different degrees of air pollution control equipment.

I think that is a sound principle that should be maintained. We would preserve that prohibition against States requiring, in effect, special equipment, but simultaneously provide [illegible] to the purchaser of a car that a new car conforms to the Federal emission standards.

EPA tests indicate that emissions from new cars are greater than that allowed by Federal standards, by and large. This is caused by, one, vehicles emerging from the assembly lines having higher emissions than are permitted by the law; and, second, that some deterioration occurs between the point of manufacture and the point of purchase.

We think that the Federal programs for assembly line auditing and testing would eliminate most of the first factor, noncompliance of new cars that come off the lines. But this amendment of mine is aimed primarily at the second factor, which would not be caught by the FEderal auditing program.

We believe that existing State inspection and maintenance programs for cars in use -- for example, particularly the State of New Jersey -- prove to be very effective. New Jersey has had such a program for in-use cars since 1974, early 1974. In that program's first year-and-a-half, New Jersey's ambient carbon monoxide levels have significantly decreased.

Also, first year results of a Portland, Oregon, program have demonstrated at least a 15 percent improvement.

In New Jersey cars are tested only when they are two years old. The State of Colorado and other States would like to test new cars and make the State programs more effective in that regard. This amendment is designed to accomplish that.

This is the substance of the argument.

Senator Randolph. Is there objection, following the

explanation of Senator Hart of the amendment pending?

Sorry, do you wish to make the motion?

Senator Hart. Yes, I move the adoption of this.

Mr. Billings. There is one point, and that is, as I understand the amendment, it is not the intent of Senator Hart in any way to permit a State by this amendment to apply a standard more stringent than the standard to which the motor vehicle was certified. It is the intent of the amendment to provide the State with an opportunity to see whether or not the cars meet those standards at the time of their sale in relation to maintenance programs.

Senator Hart. That is why I say the amendment was designed to prevent States from erecting different standards. That would not affect that in any way whatsoever.

Senator Muskie. This strikes me as a way of supplementing the procedures of the Environmental Protection Agency with respect to testing the performance of the vehicles. Do you see any problem with that?

Mr. Billings. No. It underscores, Senator, the importance -- and the report should probably note this -- of having the Environmental Protection Agency put out a short test which correlates to the certification test, because in order for this to be really meaningful as a supplement to [illegible] relate to tests to which the vehicle was originally certified.

Senator Muskie. Do you see any problem with that?

Senator Hart. No.

Senator Randolph. Is it permissive of the State?

Senator Hart. Yes. It would permit a State like Colorado that wished to have the ability to do that, if they so chose, but it would not require a State to do that.

Senator Muskie. Can I ask a question? Does this have the effect of diverting the better performing cars into the States with such laws?

Mr. Cummings. The only way that would happen is if the companies did the testing in advance.

Senator Muskie. Which would not be a bad thing.

Mr. Cummings. I am not sure Senator Hart mentioned this. The kind of equipment involved is the kind of equipment dealers would have in the State, at least like in the State of New Jersey. It is not a very great expense per car, to be done in the dealer's showroom.

Senator Muskie. You are not suggesting the amendment would be hailed with enthusiasm by the auto industry?

Mr. Cummings. No, I am not.

Mr. Billings. Or by the dealers.

Mr. Cummings. But it is probably a cheaper option than testing cars after they have already gotten into the hands of the consumers.

Mr. Billings. And there would be no reason why the

dealers of a certain company couldn't join together to have a testing facility to pre-sale test these cars.

Senator Domenici. Mr. Chairman?

Senator Randolph. Yes, Senator Domenici?

Senator Domenici. Gary, how do you envision this promoting assembly line testing?

Senator Hart. It might or might not. I think what is going to promote assembly line testing is the proposal for a Federal auditing program. The point is that the law presently, the way it is implemented is that EPA only tests prototype cars, not every car. And although cars are mandated to meet a standard, there is no guarantee they do.

It is my understanding there is proposed to be an assembly line test on an auditing basis which would see how many of the cars are in fact meeting the standard. That will help at the point of manufacture.

But there is substantial evidence that between the time a car leaves the plant and the time it gets on the road and the key is stuck in, there is deterioration there also.

What this would say is "X" State could set up a section in connection with the title or certification or some normal State procedure which would require on a car-by-car basis or a random basis, or whatever, that the cars meet the existing standards in the law.

Is that responsive to you?

Senator Randolph. Yes. When you mentioned the auditing approach, is that going to be done under existing law?

Mr. Billings. Yes. In fact, the audit is in effect already. It has resulted in a recall, or a decertification, of the Ford Mustang II, or something. It has already resulted in one decertification and a requirement for assembly line correction because of failure to meet certification standards.

Mr. Brayman. The assembly line test currently in operation was so-called selective enforcement. Auditing is significantly different in that 40 percent of the cars can fail to meet the standards and the line still goes ahead and is produced. It is not in each and every test in any shape, in any way.

Mr. Billings. It is a very modest effort in assembly line testing. It doesn't really comply with the requirement of the law that each and every vehicle meet the standards.

Senator Randolph. We have the motion. Has there been a second?

Senator Muskie. I will second the motion.

Senator Randolph. Senator Muskie seconds the motion of Senator Hart for the amendment pending.

Senator Randolph. Could I ask one more question? I understand it is permissive, and it is obvious they would have to have an inspection-maintenance program or this would be part

of nothing. So we are talking about that kind of jurisdiction. What would the enforcement authority be? Assume this was put in by a State as part of their inspection-maintenance program, establishing a title process by random selection, and they found car XYZ wasn't doing it. What would happen next under existing law?

Mr. Cummings. Under his amendment, the car in question would not be titled in the State or registered.

Mr. Brayman. That would depend on the State, Senator.

Senator Domenici. It doesn't say that. That says they can have that as a condition precedent to the title.

Mr. Brayman. It would be up to the State to decide what enforcement.

Senator Hart. One is the existing Federal law. It would be up to EPA to do whatever it could with regard to their authority. Second, I assume the States could also --

Senator Domenici. Say no title?

Senator Hart. That is right.

Mr. Cummings. That is the change this makes. The existing law says no State can require certification inspection or anything else relating to emissions before title. The amendment Senator Hart is proposing takes away that prohibition.

Senator Hart. And that prohibition was put in to keep the States from acting on different standards. This would not do that.

Senator Randolph. Call the roll, please.

Mr. Yago. Senator Anderson?

Senator Hart. Aye, by proxy.

Mr. Yago. Senator Baker? Senator Bentsen?

Senator Randolph. Aye, by proxy.

Mr. Yago. Senator Burdick? Senator Chafee?

Senator Stafford. Aye, by proxy.

Mr. Yago. Senator Culver?

Senator Hart. Aye, by proxy.

Mr. Yago. Senator Domenici?

Senator Domenici. Aye.

Mr. Yago. Senator Gravel?

Senator Randolph. Aye, by proxy.

Mr. Yago. Senator Hart?

Senator Hart. Aye.

Mr. Yago. Senator McClure? Senator Moynihan? Senator Muskie?

Senator Muskie. Aye.

Mr. Yago. Senator Stafford?

Senator Stafford. Aye.

Mr. Yago. Senator Wallop?

Senator Wallop. Aye.

Mr. Yago. Senator Randolph?

Senator Randolph. Aye.

Mr. Yago. The motion is adopted by 11 to nothing.

Senator Randolph. Vote of 11 affirmative; no negative. We give permission as always for members not present to be recorded.

Gary, are you ready for the other one?

Senator Hart. Mr. Chairman, we are passing around some literature which I think most of the staff and members of the committee already have. It suggests a new approach to the problem of nitrogen oxides and certain other pollutants from automobiles.

In a nutshell, what this would say is that we would retain as an effective minimum standard the proposal contained in the committee bill that we are presently discussing, .4 NOx in the out-year, 1.0 by model year 1982. But at the same time it would erect another standard which we have been using in various discussions over the last two-and-a-half years of .4 as the nitrogen oxide standard, also by 1982.

Now, what the amendment would do -- and I will go back and give the arguments in favor in a moment -- is say that if an automobile, presuming all automobiles by 1982 will have to meet the 1.0 standard of NOx, meets that standard but does not get to the mandated standard of .4, that the automobile can continue to be manufactured and sold but that a noncompliance penalty, rated by the EPA administrator on the cost of compliance with the .4 standard plus 50 percent, would be imposed.

Now, we can discuss the formulation of that and the

mathematics of that in a moment. But that is essentially what the amendment would provide.

The manufacturer would be encouraged but not required to meet the .4 standards. And to the degree that the market price of automobiles and that automobile sales are price sensitive, it is my feeling that the noncompliance penalty will act as an incentive for both the manufacturer and the purchaser to meet .4 NOx standards.

The .4 NOx standard, in my judgment, has been more than adequately justified in the testimony we have received in this committee over the past two-and-a-half years as a standard which is both reasonable and necessary. Those who disagree with that have based their arguments on the incentives necessary for industry to try other alternative technologies, particularly the diesel technology, which has difficulty in meeting the NOx standard.

But I believe there is ample evidence indicating that the public health standard which is necessary is .4 NOx -- and we can come back and discuss that, if we wish.

The other feature is it would provide a rebate for those cars which do provide technologies which meet the .4 standard or below. And that would be the carrot which would induce manufacturers to produce such cars and induce, ultimately, consumers to purchase such cars.

The EPA administrator under this amendment would be

authorized to distribute any net revenue generated by the penalty and rebate program to State and local governments for the purpose of implementing transportation control plans.

States are also extended the authority to set fines and rebates over and above those established by the EPA administrator.

That, in a nutshell, is what the amendment would do.

One of the questions which is asked about this proposal is whether the manufacture would pass the penalty on to the consumers, and, in turn, would they be able to keep the rebate. The answer is they would probably pass the penalty on to the consumer, but that is not necessarily bad to the extent that sales are price sensitive.

It seems to me that there will be an inducement to the manufacturers to reduce the amount which they pass on by lowering the emissions, which they can do, and thus reduce the level of the penalty.

I think that it would be important also, if we pass this amendment, to have language in the report which accompanies it which would indicate the the feeling of this committee is that a price sticker of an automobile should refelct either the amount of noncompliance penalty or the rebate, whichever is involved, laying out to the consumer the advantages or disadvantages of buying a particular car.

When this committee adopted the 1.0 gram per mile NOx

standard instead of the .4 gram per mile, we were operating on the assumption that the .4 standard might not be achieved and that if it were achieved, it would be a serious fuel penalty.

After that decision was made there was manufactured and marketed in California the Volvo car. That car beat the NOx standard, the .4 NOx standard, by 58 percent, with a certified level of .17 grams per mile. At the same time it also beat the hydrocarbon by 51 percent and the carbon monoxide standard by 18 percent. And this was all accomplished with a 10 percent fuel economy improvement over the previous year's Volvo car.

Even though these cars are comparatively expensive fuel injection automobiles, I think they demonstrate the .4 standard can be met and met without serious fuel penalty.

What we need here is more than a research goal. I think we need a positive incentive to market lower standard cars. This proposal would not license pollution. There would be a maximum in the law of 1.0 gram per mile. I don't think it could be argued that what we are doing is providing an incentive for people to pollute. I think it is very important to keep that maximum standard there.

This penalty option would not go into effect until 1982, five years from now. And this will provide adequate lead time for the fee schedule to be set by EPA and put the consumers on

notice that it would go into effect.

Those are the substantive arguments in favor and the description of the amendment, Mr. Chairman. I would be glad to answer any questions or hear any discussion of it.

Senator Randolph. Would that be a penalty, Gary, as to cost of the car?

Senator Hart. It would be based on the cost of compliance of meeting the standards, plus 50 percent. That is to say, if EPA determines the cost of meeting the .4 standard to be, let's say, $100. The noncompliance penalty would be $150 per car.

Senator Randolph. Cost plus 50 percent?

Senator Hart. Yes.

Senator Randolph. Is there discussion of the pending amendment?

Senator Muskie. What would be the source of the rebate?

Senator Hart. What could be the penalty fund.

Senator Muskie. What would be the measure and the source of it?

Senator Hart. We would leave the EPA administrator fairly broad latitude in calculation of that, with some committee or congressional oversight as to how that was going on. But I would not want to lay down a hard and fast specific formula that tied the administrator's hands in terms of exactly the rebate or penalty per car.

Senator Muskie. This would come out of the treasury?

Mr. Cummings. The language on page 3 gives the option of paying rebates out of the proceeds of the penalties collected or out of funds appropriated.

Senator Stafford. In practical terms, does that mean if you bought a .4 car, you would be getting a $150 prize as a result of the fact you had bought a complying car as against a noncomplying car?

Senator Hart. There would be no penalty but there would be no rebate. If you got a .3 car you would start getting a rebate, or a .35 or .39.

Mr. Cummings. Senator, the difference between a 1.0 car and a .4 car would be a difference of $150.

Senator Stafford. At what point do you get a rebate?

Senator Hart. Under .4. You pay above it, but you get a rebate below it.

Senator Muskie. The rebate applies to HC and CO, too?

Senator Hart. You also get a rebate if the hydrocarbon, carbon monoxide standards were below the level of what the law required. So it would be a triple incentive.

Senator Stafford. Did I understand you to say you believe this could be done without a fuel penalty?

Senator Hart. Based on the Volvo experiment, acknowledging again that all the points have been made about the Volvo -- it is expensive and fuel injection and so on, and one technology --

as you know in June 1975 the National Academy of Science listed four technologies which might be used to meet a .4 grams per mile standard, which the National Academy of Science has always favored. Those are the dual catalyst, three-way catalyst, CVCC, and other technologies.

What we are trying to do is meet Ed's incentive of encouraging people to experiment with diesel and so on. We are saying you can put diesels on the road even though they just meet the 1.0 standard, but we are encouraging you to even experiment with a diesel technology to try to get that one down, too.

So it is an attempt to have the best of both worlds in encouraging a variety of technologies but providing an economic incentive to get down to the .4 level.

I think Ed will want to address this, but I think his argument has been he does not want to discourage people from looking at other technologies. And that is a point I would agree with.

Senator Muskie. I think that is certainly one of the concerns I have and still have. I think that is an important thing. That isn't necessarily inconsistent with this.

Secondly, I think that you know when you go from 1.0 to .4, taking into account that first concern, there is a tendency to think that the automobile is the only significant source of nitrogen oxides. And we have tended to focus on it so much

with respect to the automobile that I am not sure we built up the pressure we need to build with other sources.

To that Senator Hart, of course, makes the point that automobile NOx is at a level where it may be more important as a health concern than is the general dispersion of NOx.

So you can argue the thing out. But I think the heart of my concern -- and that is not meant as a play on words -- is the fact that the technological options -- and I am not expert on those -- such as that, I was trying to avoid narrowing them too much by concentrating on .4. The 1.0 may leave more technological options open.

This amendment isn't necessarily inconsistent with that. We put it in last year as a research objective, the .4.

It could be argued that this amendment has the effect of stimulating research. As such, it is not bad.

I haven't made up my mind on this amendment yet. I am a little bothered by how you compute the cost of putting in place technology that hasn't been invented yet. That bothers me a little bit.

Also on the rebate incentive payment, it seems to me we have to be a little more specific as to how that is to be measured and what its cost is going to be. Because conceivably we may be imposing a cost on the treasury and I would be concerned about that. I think we ought to have something more to say to the Senate about that potential cost than this amendment says

up to now.

Senator Hart. Let me respond to both of those. On the last one, first, there is a provision that says no net loss to the treasury. If it looks like by 1984 a lot of cars are suddenly getting the rebates, the administrator has the authority to go ahead and recalculate the rebate.

Senator Muskie. Suppose that the incentive works and a lot of models become eligible for the rebate. Does that include an annual payment to those, or one time?

Senator Hart. It is a one-time payment just on the sale.

Senator Muskie. For just the one year?

Senator Hart. First time. Wait; I thought you meant resale. Yes.

Senator Muskie. Let's take Volvo or any other car, like model "X" cars. They produce a technology to do better than standard, so that annually they are going to get, or their customers are going to get a rebate for the indefinite future.

Senator Hart. That is correct. But let me walk through the calculation. But I would like Senator Stafford's attention because he asked this question.

Senator Domenici. While you are waiting to do that, I have something.

Senator Hart. I can do it in a minute.

Bob, you both asked the question.

The National Academy of Science has done some work on this.

I think it illustrates what I am talking about.

The National Academy of Science estimates a comparative lifetime emissions control cost of several different technologies, the different level of control. They estimated, for example, for a three-way catalyst system the difference in total lifetime cost of the control between a .4, 3.4 and 1.0 standard and a .4, 3.4 and .4 standard was $133.

Now, under this proposal, a car produced in 1982 with the 1.0 would be subject to a $200 penalty, cost of compliance plus 50 percent. A car meeting the .4, 3.4 and .4 standard would not be subject to a penalty. And a car which met the NOx standard, which Volvo met in the 1977 California car, would receive a rebate of approximately $75 for being cleaner than the NOx standard. That is using the .14 achievement they were certified at.

Those cars were also cleaner on the HC and CO standards and would receive additional rebates.

The calculation of the rebate would be what it cost them below the .4 plus 50 percent. That would be the formula.

Senator Muskie. Is it or isn't it arguable that for those companies that find the technology, getting down to the standard or getting below the standard is more costly than getting down to the standard?

Senator Hart. That after .4 it is all free?

Senator Muskie. I don't know what precision it is possible

to put these technologies together with. But it is conceivable that when they have done it, that actually they haven't exceeded the cost which they estimated in the first place and get a better result.

How do you apply a cost to the difference? If they had been more precise in gauging their results, on what assumptions do you conclude they could have reduced their cost if they had gotten just down to the standard? It is conceivable that the cost put into it, they did better than they expected but they didn't necessarily spend more money on it. I just don't know how you calculate it.

But on the NOx thing, Gary, they ought not as a result, under your NOx provision, of meeting the .4 sacrifice the other two standards. In other words, is it possible under your amendment that in order to avoid the penalty they meet the NOx standards but do not meet HC and CO standards?

Senator Hart. No, my amendment does not permit any exceeding of any standard. It only offers the rebate on the other two if they do better.

Senator Domenici. I first want to commend Senator Hart for trying to build some of this into this law. I am not going to be critical of the overall law, because obviously we have made great strides. And I think perhaps the options to push technology through penalties and rebates at the inception of the law, the decision was made that was not the way we were

going to go.

I am saying at this late date who am I to be critical. I don't think we all had an understanding of how we could have pushed the arrival of standards through penalties and rebates or paying for the internal costs of pollution, which is the basic theory that gave birth to this notion.

So in that respect I have joined Senator Hart on the notion that maybe we should push pollution technology this way.

But I can't vote for this one, and I would tell the committee why. First of all, it seems to me that the committee did not take lightly the vote, which I believe our chairman supported, to take .4 NOx out as a standard. I don't think we did that solely on the basis of whether or not technology would get us there.

Had we done that, then I think this would make more sense.

I think we did it on the best evidence we had as to both getting on 1.0 NOx through technology and considered everything else there. But I think we also made a decision from the health standards standpoint that 1.0, if we did the other things that we are trying to do with reference to stationary sources that the Chairman has referred to ans others, that it was obviously adequate.

Now, if we don't believe that, of course, my argument

fails. But if we do, it would appear to me that Senator Hart has chosen a technology-pushing rebate which almost says, let's push it and charge a rebate even though we don't set it as a health standard.

Now, as I said, if we went back four or five years and when we had the various annual options, had we addressed it in that way, setting the goal that we thought was the health goal and making the clear decision that there were two ways to go -- push the standard annually or biannually or under a chart of 10 years or setting gaps in there or four or five years when we would have a variable and penalizing -- I think we would have had a far better justification for doing it.

But, to me, Mr. Chairman, if we recall the technology pushing on this, once we got the .4 out of the formula, out of the overall standard, we got some real movement in the technology. Once, when we had the .4 in the schedule, because of the conflicting achievements of technology, we got little motion in the direction of the three-way catalyst and the like.

So if we are going to test this theory in the marketplace, it appears to me it is the wrong one when we are setting a goal for the rebate and a penalty that is not considered to be a health need by the committee. To put it bluntly, it would appear to me that whether we like it or not, this is building back into it something we agreed we didn't need, because you can't apply the .4 any way other than to the whole fleet, under

Senator Hart. Some will get penalties and some will get rebates.

But we are belatedly setting a heavier standard than we ever agreed necessary. And I assume that is based on the premise we would push the technology.

I wish we had a way of pushing beyond demonstration as a goal for .4, see if it is achievable. But I think inherent in that demonstration was that we also continue to assess NOx in terms of its health hazard contribution. But we also have decided that 1.0 is certainly what we would like to see as the end product in NOx.

Now, if we were moving from 1.5 or 2.0 NOx to 1.0 and gave some latitude for those who wanted to assess the other ingredients and said, okay, you can suffer penalty until you get to the 1.0, we would have been forcing technology to achieve a goal, a goal we clearly wanted.

This one is forcing technology to achieve a goal we have never set, assessing penalties and rebates on that for the sake of pushing a technology.

I think we have many areas in the Clean Air Act where we need to push technology, make different decisions to achieve our goals, but certainly this isn't one.

Senator Hart. First of all, I think each member of the old committee will have to decide why they voted for 1.0.

Senator Domenici. I agree with that.

Senator Hart. I think there were some that believed .4 was the better standard. It was not everybody who concluded 1.0 was about the best health standard. I think there were people who believed we were going to have to go to .4 but didn't know how to do that and get people to work on other technologies as well.

I quarrel with the assumption we made that decision for that reason, that is, that 1.0 is a good health standard.

Second, as Ed Muskie said, in the last two years we are also coming to this realization that it is just not the automobiles that are producing this. We have to do something about stationary sources also.

Third, I think there are those very qualified people and interests who strongly continue to make their points for standards. I cite the February 24, 1977, memorandum from the California Air Resources Board, a 12-page memo, which concludes by saying, "We believe that substandard air quality in California and many other urban areas clearly demonstrates the need to reduce the automobile's contribution to pollution. And we are convinced that this can be done in a reasonable and efficient manner. We recommend the Administration's consideration of the following standards: 1982, hydrocarbons .41, carbon monoxide 9 or 3.4, and NOx .4."

In the body of the memorandum it says, on nitrogen oxides, the California Air Resources Board recently sponsored a seminar

involving scientists from the automotive industry, the California university system, independent consulting organizations and the staff of the ARB's own research division. "As a result of that gathering, we are now more convinced than ever of the need for a statutory NOx standard of .4."

I don't think the battle is over on that issue. And I think we are going to continue to hear it from those who strongly believe -- members of the scientific community -- that 1.0 is not enough.

This amendment is an attempt to accommodate the need for technology and the need for protecting public health.

And, Pete, when you argue by relaxing or setting a 1.0 level we have induced technology to improve in the other areas, I would agree with you except for the testimony we received in this year's hearings from some automobile manufacturers saying they think 3.4 carbon monoxide is too strong.

It is not as if by relaxing NOx, by not tightening up on NOx, we have achieved a great deal in the other areas. There is still continued pressure to relax the other two areas, even though we know technologies exist for those.

Senator Randolph. As I recall, on the last go-around you opposed the raising. Am I correct?

Senator Hart. That is correct.

Senator Randolph. It seems to me I made a very strong argument on it.

I failed to catch the authority you were reading.

Senator Hart. This document was a February 24, 1977, 12-page memorandum prepared by the State of California Air Resources Board, which urges the new administrator and us, in effect, to press for .4 standard by 1982, and bases that on studies done in our own State and discussions they have had among themselves and the automobile industry on a need for this in many areas of the country.

Senator Randolph. Thank you.

Senator Hart. I would be glad to make this part of the record, the entire document.

Senator Randolph. I think it would be helpful, because I missed the authority.

Senator Hart. It is a thoughtful document.

Senator Randolph. We will include it.

(The memorandum follows:)

Senator Chafee. I would like to ask Gary whether this is is tangential in a way. In connection with the California standard, is it true that they have resulted in 11 percent greater gasoline consumption? Is that a rule of thumb, or is that false?

Senator Hart. I will get you a specific answer. I think there is great discussion and debate, depending on who you listen to. I don't know the source of that figure. I am sure there are those who feel the California standards have produced those results.

But I think there are others in the State who would quarrel with that statement. The statistics contained in this memorandum, I will read them to you. "The benefits to be achieved in terms of emissions reductions by moving from the current Federal to the current California standards is shown below:" And then the 1977 California standard hydrocarbon is .41, carbon monoxide is 9.0 and NOx is 1.5, with average fuel economy of 18 miles per gallon. The 1977 Federal standards were 1.5 for hydrocarbons, 15 for carbon monoxide and 2.0 for NOx, with average fuel economy of 18.6 per gallon. So the difference per mile seems to be only .6 mile per gallon on the average, on substantially different standards across the board.

Mr. Billings. Senator Chafee, one additional point; during the time the committee discussed this issue over the past two years, it was one of the arguments for going below

1.5 as the NOx standard down to 1.0 or less that the particular numbers California chose for 1977 cars were likely to yield the least fuel efficient results because it would be cranking down on existing technology rather than go to the next stage of technology.

As Senator Hart has indicated, those companies that chose to go to the next stage of technology, that is, Volvo with the three-way catalyst, in fact got an improvement in fuel economy over the prior standard. So the interim California standards should not be taken as any measure of the kind of fuel economy losses to be expected once the companies take the next step technologically.

Senator Muskie. May I make another point? With respect to the health implications, I guess as Gary has said, we can only speak for ourselves in our motivation in supporting the 1.0 standard.

I offered it, not because I had a final judgment that that was adequate but because I thought it was our only means, given contribution from other sources of this pollutant. So I did not have a final standard that 1.0 was adequate.

There is one other point that needs to be made. When I offered 1.0 in the context of 1979 or 1980 as the date for the achievement of the HC and the CO standard, I just had the strong feeling that if we wanted to achieve those two standards by that date, that we had to leave the technological options open,

because HC and CO are still the most lethal of the automobile pollutants. I thought it was important to achieve those at the earliest possible date. And what we finally agreed upon was 1979 and 1980.

Now the industry is pushing for a delay beyond that, pushing an amendment in the House, and I guess there is going to be one offered on the floor of the Senate to further delay HC and CO beyond the dates we agreed on last year.

So I am tempted, if we are going to do that, to buy the hard approach here as a way of forcing technology. I happen to believe they can meet HC and CO by 1979 and 1980. I have no doubt at all.

But if they are successful in delaying it further, then it seems to me they ought to be put under the gun on NOx as well. If we are going to have that much more time ofr HC and CO, I don't know why they shouldn't use that time to achieve NOx. That is what is going through my mind.

Secondly, the Hart amendment wouldn't take effect for five years. And with respect to the 1980 deadline that we talked about in the bill that is before us, it doesn't take away, doesn't limit the technological options for that three years. And we will have three years to look at what is happening. And this is, in effect, a way of stimulating the research objective.

But I guess we can rationalize it any way we wish,

independently. But at the moment I am intrigued by the idea.

Senator Hart. Let me offer two things in response to your question about fuel penalty, John. I think all the evidence we have and the studies we have indicate that the fuel diseconomy results more from weight of the automobile than from emission controls across the board. And that evidence -- I think we can dig it up from the record -- over the past two-and-a-half or three years is that the weight is much more a factor in fuel loss.

Second, I think just from a parliamentarian point of view, I hate to be pragmatic or seem cynical here, but if we are going to face a House bill which suggests strong relaxation or substantial relaxation of our standards, I would offer this as kind of a bargaining chip we could use in conference in that regard.

I don't want to see my brainchild thrown overboard here, but if we have it on board in case we want to --

Senator Muskie. The Senator is reading my mind.

Senator Hart. I have been around a while.

Mr. Billings. May I ask you a question on your timing, as a technical point. On page two of your amendment, you say, "Such penalty shall be established by the Administrator at the time such certificate is issued." Would it be more appropriate to have that penalty established perhaps a year before certification so that the manufacturer would know the kind of

penalty that he was likely to be confronted with?

Senator Hart. Yes. I think we could change that.

Senator Randolph. John, are you going to be prepared to vote on this matter by returning? I think we are nearing the place where we can.

Gary, is that your understanding, that we can vote on it?

Senator Hart. I think it is an important matter. I wish we had more people here, because I think people are going to be voting proxies that don't know what it is about.

Senator Randolph. I will be the servant of you the introducer. If you would rather not vote now on it --

Senator Hart. I am not sure.

Senator Huskie. Could we have an agreement that the Hart amendment would be voted on with not more than five minutes debate next time, if we don't finish today?

Senator Hart. Maybe we could attach it to the non-attainment discussion when, hopefully, we are going to get more membership here. I don't want to put it off if we don't get more attendance.

Senator Randolph. Senator Domenici has been here during the discussion and said he would vote against the amendment. And I don't know. Bob, what your situation is.

Senator Stafford. If it is any comfort to Senator Hart, two of the Senators we are missing on this side, I don't know what their wishes are, and I don't intend to vote them.

Senator Hart. I am prepared to vote.

Senator Stafford. I do have one proxy.

Senator Chafee. In connection with these amendments that come up, obviously we don't get a chance to hear the other side, problems that arise as a result of the amendment being submitted. That is one of the problems with amendments that come up in this fashion.

I am not saying I am against it.

Does staff know any difficulties in connection with this, any pitfalls, something that is going by us that we don't know about?

Mr. Billings. Senator Chafee, as would be expected, the auto industry is opposed to the amendment. Senator Hart surfaced his amendment at the hearings.

Senator Hart. It has been around a while.

Mr. Billings. And he asked the industry to specifically comment on the amendment. I have the comments here in front of me, the comments of General Motors, on the proposal. They raise specific issue with respect to the cost computation; the question of knowing sufficiently in advance of the penalty to which a manufacturer might be subjected, which was the issue I raised just a moment ago to Senator Hart; the question as to whether or not the control levels are attainable, and so on.

Senator Chafee. This isn't a question of whether it is attainable or not. The problem is if you do attain it, you get

a reward. Isn't that it?

Senator Stafford. More than attain it.

Senator Bentsen. But if you don't attain it, you get a penalty.

Mr. Brayman. One other problem I don't believe has been discussed at too much length is the feeling that if the payments are not a rebate to new car buyers, if they go to the transportation control areas, you have a situation where rural areas end up pouring all their money on cars into a few cities where they have dirty air and those cities need to pay for a subway system or some such thing that would be financed through this car tax. I think there is some feeling that may be inequitable.

Senator Hart. Also, the response, which the staff mentioned, from the auto industry was in response to a broader proposal which I put forward in the hearings themselves. And we circulated it as such. This proposal would go into effect in earlier years and be somewhat more elaborate and sweeping. So what the industry response to this specific proposal, which is narrowed and would take place in out years, is we don't know yet. I think it is safe to say the industry would not favor it.

Senator Muskie. May I say this: In the event a more relaxed time table than the one in the bill should be approved, I would heartily endorse the Hart amendment as a way of

toughening up that relaxation.

I understand the pressures that have been generated to produce a more relaxed timetable. They are not evidenced in any committee, so far as I know, but we may face that. If that happens, I am going to be an enthusiastic supporter of something like the Hart amendment on the floor.

I am interested in trying to find a way to keep it alive in order to have it available. I haven't come up with an answer, and I don't want to complicate this business and I don't want to delay the chairman. I am all for having a vote today.

Senator Randolph. I think we ought to vote, frankly.

Senator Bentsen. Mr. Chairman, I am sure the industry is opposed to it, but I would like to know why they are opposed to it.

Would you reiterate the reasons. That seems to be lost, and I would like to try to evaluate the credibility or noncredibility of the reasons.

Mr. Billings. The particular comments that I have in front of me, Senator Bentsen, are those of General Motors, and they are four pages long. I don't want to mischaracterize things, so I will have to try to summarize it. I will read you two pieces.

"The problems which we feel will inevitably result from the new control philosophy include:

"One, the need to determine and obtain agreement on not the basic control level desired but on a subsidiary higher level of control as well;

"Two, the need to develop a 'penalty' mechanism and obtain agreement on the size of appropriate penalties that would be assessed for failure to meet particular control levels.

"With respect to the details of the bill, even if the new approach is accepted, for the purpose of discussion, the bill seems troublesom. First, the particular standards chosen seem unwise, basically from the cost-benefit approach referred to earlier. There appears to be no legitimate reason or need to try to force controls beyond a level where the average car would meet the more lenient of the standards. Thus, the bill would encourage levels of controls and cost not discussed."

Second, the letter goes into problems, cited innumerable problems relative to the calculation of penalties based on individual cars.

Senator Randolph. The Chair is never in a position of saying we are going to vote because the Chair wants to vote. The Chair will vote if members are ready to vote.

Senator Hart. I sympathize with Lloyd's problems, because it is an innovative step, to my knowledge. It hasn't been tried before. That is the reason for much of the industry's concern. It is uneasy when you try anything new.

Senator Bentsen. I don't mind that at all. I just

question, when we have gone to the 1.0, of going to .4 to keep that attainable and if there is any realization of benefit. That is my concern.

Senator Hart. There is definitely going to be an effort, not only in the House but here in the Senate, to relax, certainly, the 1.0 and even some of the other standards. The tide is running the other way, if you will. It is not as if we have set 1.0 in the law. We are going to have to fight pretty hard to get that.

I was offering the suggestion that this would give this committee some leverage in that regard.

Second, it does hinge on one's own convictions as to what is the appropriate health standard. And Pete was saying earlier before he had to leave that we had decided as a committee that 1.0 was the appropriate health standard. My response to that was that is an issue still under very heavy debate, that the 1.0 was essentially a compromise to the industry to get the NOx level down, and the other things as well.

But I cited a California Air Resources Board memorandum and put it in the record, which as recently as 30 days ago was strongly urging the Congress to go to a .4 NOx standard. So the effort is still going on out there, among many experts, to get in testimony in this year's hearing supporting this, to get this level down.

Now, we are going to have to work on stationary sources as

well. But the level of NOx as a cancer-producing agent has to come down.

So I don't think it is as if we all agreed to 1.0 forever and we have achieved it as a congressional objective, because that is going to be a battle.

Two, I think this approach I offered is innovative and combines incentives and disincentives, and gives really the best of both worlds in terms of technology, promotion and achievement of what many people believe to be an important health standard.

And, third, it would give us an important bargaining chip. I will be frank with the chairman and this committee. I am inclined to bring this up on the floor for a variety of reasons. I don't particularly want to do that if I don't have the support of this committee. I would prefer not to even have a vote on it so I can bring this argument up and make it before all the Senators.

I think it is an important argument, and I think it is an important new approach in pollution control. And I would like to either have the support of the committee or not have any committee vote at all.

So there is no way to know that without counting the heads.

Senator Randolph. I don't know how the committee members are going to vote. I do have a proxy, and the man does know how he wants to vote on that. I must say that. He is very specific

on that. That is all I know.

Senator Hart. Because of the doubt, Mr. Chairman, I am inclined at this time to withdraw the amendment and take it up probably on the floor, make the argument in full, and hope to get the support of not only the committee members in that argument against the effort to once again relax these standards across the board, but, hopefully, the Senate will go along.

Senator Bentsen. Let me say I would like the incentive and disincentive approach. I think that is a good approach. My deep concern is the .4 would be unattainable.

Senator Hart. That is the other point I meant to mention. Since we adopted last year 1.0, the Volvo information did come out. It is not only that you can get .4 and beat it, but they went down to .17 on the certified 1977 Volvo and beat the other standards as well.

Now, given the fact that is an expensive automobile, it is a fuel injection automobile and all the rest, they did it with 10 percent fuel efficiency gain, and the proved you could get to .4 and do it without loss of fuel efficiency and you could get the other standards as well.

That was a very important breakthrough that happened after this committee made its final decision on 1.0, when the record we had was strongly that that couldn't be done. I think it is an important breakthrough that wasn't before us last year.

Senator Muskie. May I say that I think your strategy here

is probably sound. Let me say also that if there is any indication on the part of the Senate as a whole to relax the timetable that we put in last year, then I would think the technique you offered is almost a must, if that happens, because otherwise what we will have is simply another five-year delay. That seems to be the target, without any incentives even to meet it.

You know, once there is a habit of writing in delay in meeting these standards, it is going to continue.

I am going to look very favorably on your amendment, if it is raised on the floor, depending on what happens to the timetables in this bill. I want to make that clear. Fully apart from what may be growing interest in that kind of technique in dealing with pollution across the board -- and apparently there is growing interest in that -- with respect to this particular problem, if we relax, if we are pressured to relax timetables, we are going to have to supplement them in some way to show we just don't continue this pattern of continued delay. But the standards we are talking about were set for 1975, and we have set them for 1980 in this bill.

Senator Hart. And there is going to be an effort to put them beyond that.

Senator Muskie. And so I am getting a little frustrated that what we are doing isn't working. And we may need to go to something else.

Senator Stafford. Do I understand, Senator, that for the time being the amendment is withdrawn?

Senator Hart. Yes.

Senator Randolph. In accordance with the request, Senator Hart, the amendment is withdrawn, without objection.

Senator Anderson, I believe you have an amendment.

Senator Anderson. I talked to the father and mother of this legislation last week.

Senator Randolph. Who is the mother?

Senator Hart. Wait a minute.

Senator Muskie. I am not sure who the father is. (Laughter).

Senator Hart. I don't want to pursue that analogy.

Senator Anderson. I sent around a letter indicating I am going to offer an amendment that would allow individual States to offer California type standards. It is my understanding, Senator Muskie, that you thought it would be unwise to offer this type of amendment at this time but it may be very appropriate later on. Is that your position?

Senator Muskie. Yes.

Senator Anderson. Then I am not going to offer an amendment at this time.

Senator Randolph. In accordance with the request from the Senator from Minnesota, Mr. Anderson, the amendment will not be offered.

Would you desire to offer it later, or you are not going to offer it?

Senator Anderson. Only on the Senate floor, depending on what happens.

Senator Randolph. That is the position I believe Senator Hart has indicated; they would be possibly floor amendments.

Lloyd, do you want to begin talk about nonattainment?

Senator Bentsen. Mr. Chairman, I don't see it resolving anything today. I don't mind talking about it at all, but I understand we will not be in session in the Senate until 4:00. I hope we can move this bill out tomorrow and, in turn, resolve, obviously, non-attainment.

We came to this conclusion late Friday afternoon as I left to catch an airplane for Texas. I understand they had a very pleasant weekend in Washington, and I am not sure how much work was done.

Senator Randolph. I wasn't here.

Senator Bentsen. Neither was I. But I think we have quite a bit of work yet to do on this amendment, from what I have been told.

Mr. Billings. Too much work was done and everybody came in with their own proposals.

Senator Muskie. It might be well if the staff might at this point present a summary of at least what they have done.

Senator Bentsen. I have no objection to that. I would much rather wait until tomorrow --

Senator Randolph. Now, a very dear friend of mine has died, and the services will be held tomorrow afternoon in Pittsburgh. I will leave on a plane scheduled shortly before noon. And, frankly, I would not be able with scheduling to come back in the afternoon in time, apparently, for any discussion of the subject matter.

Ordinarily I would not want my problem to be the problem of the committee, but I think in this instance that we can rearrange our scheduling, hopefully, to accommodate the time that I might participate.

I am ready to meet in the morning. I am ready at 8:00 or 8:30, 9:00 or 9:30, whatever.

Senator Muskie. I can't be here in the morning because I have a White House meeting. But I have no objection to the committee meeting and proceeding. It is a 9:30 meeting, and it is on the Indian question.

Senator Randolph. I doubt if we are going to be able to do much, then, in the morning.

Mr. Billings. We can't meet this afternoon?

Senator Randolph. We can meet until 1:00.

Senator Muskie. I would have no objection to meeting at 8:00 in the morning, but it takes half an hour to get a quorum.

Senator Randolph. I am ready to adjust tomorrow because of

my trip.

Senator Bentsen. Will you be back by 11:00?

Senator Muskie. I think there is a fighting chance to be back by 11:00.

Senator Randolph. That would help me for only minutes, with a 12:00 departure. I am not insisting, but I think in this instance the chairman does have certain desire to be here.

Senator Muskie. Couldn't you do something, say at 9:00, by way of discussion?

Senator Bentsen. I will be delighted.

Senator Muskie. We wouldn't necessarily have to vote then, but it always takes a certain amount of discussion. I would get back as soon as I could.

Senator Randolph. Let's see if we could have members present. I will have to go back and forth a little with coal conversion being heard before the Energy and Natural Resources.

Senator Bentsen. That is fine with me, Mr. Chairman.

Senator Randolph. Let's explore it with the Members.

Senator Bentsen. I will be at your disposal, whether it is 8:00 or 9:00, but I will be more disposed at 9:00.

Senator Randolph. Because Members are here, Gary, what time could you be available in the morning?

Senator Hart. Any time.

Senator Randolph. And you, John?

Senator Chafee. I may have to cloud things up. I may

have to go to Philadelphia. But if I am holding things up, I would make a point of being here, if it would help. If everybody else is set to go, I will do it.

Senator Randolph. All right.

Senator Bentsen. This is a very big issue.

Senator Randolph. I know it is an issue across the board which is across the country. Sometimes we have a Colorado or an Arizona, and that is not to speak of those as being unimportant. But this takes in every altitude. And I am wondering, why don't you permit us to work in the next two or three hours with the schedules of the members tomorrow to see just what can be accomplished.

What is the picture on Wednesday, as you see it? Are we able on Wednesday to meet? What are the subcommittee hearings Wednesday, Thursday and Friday?

Mr. Yago. Wednesday is Nuclear Regulation, which is Senator Hart's subcommittee, and Thursday is Water Resources and so is Friday.

Mr. Brayman. Mr. Chairman, if I understand, the Budget Committee starts its mark-up committee Thursday, so you have three potential members lost Thursday and Friday.

Senator Randolph. We can't handle non-attainment in an hour? You don't feel we could?

Senator Muskie. If you could get some discussion out of the way tomorrow, I will follow it. Staff will bring me up on

discussion. On Wednesday morning my problem is that there is a memorial concert for Phil Hart tomorrow night and I am trying desperately to make it. But we may have to get back here at 9:07 on Wednesday morning. Otherwise I have to go for an 8:00 meeting.

Senator Randolph. Your meeting on Wednesday morning on Nuclear Regulation, that is 10:00. It is a hearing. I take it, then, your witnesses are called and so forth?

Senator Hart. It could possibly be put off until 11:00, Gaither tells me.

Senator Hart. That seems to be it. We will meet tomorrow morning.

Senator Muskie. Do I have anything Wednesday?

Mr. Billings.. I checked one day at a time. I don't know.

Senator Randolph. We will try to be as understanding as possible. We will be that and still remember that as soon as we can, hopefully, report the measure to the Senate, we will be assisting the leadership and the membership generally. Then tentatively we will work tomorrow morning.

Senator Muskie. Is that the only amendment, now, that remains?

Mr. Brayman. Chairman Randolph's amendment.

Senator Randolph. I am not certain anyone wants to stay, because I am not going to offer the amendment. We have had

two withdrawn, that that sort of sets the mood for what I am going to say. But I think it is best, perhaps, for me to just place in the record my thinking about the need for the amendment but certain reason which seem valid to me that I would not offer it.

It would take me perhaps three or four or five minutes to discuss it, but, in essence, what I am doing is not offering an amendment.

It has to do with the enforcement of the act, the highly technical data that I think is involved at times. I have a solution that is going to come in a later bill which will be a research and environment bill. I think it can better be offered then, not to this bill.

I am not saying I have any hope it would be passed in this bill. I am setting that aside because regardless of whether I thought I would win or lose, I would be very glad to bring it up now. But I think it is more appropriate, as I further consider it, in connection with all programs rather than to zero in on this one. So I will place this in the record.

(The statement follows:)

COMMITTEE INSERT

Senator Muskie. So we can sort of have the formal understanding that there is one amendment left, that on non-attainment, and maybe Members can zero in on that. Maybe that will be some incentive to Members to come.

Senator Randolph. Non-attainment brings us to the last subject in dispute.

Mr. Guard, do you have any further information there?

Mr. Guard. No.

Senator Randolph. Do you, Leon?

Mr. Billings. Only that staff will feel obligated, after the non-attainment discussion is through, to identify certain other areas which have not been accepted or rejected by the committee which were beyond the scope of S.252 and were, therefore, not amendments specifically offered by Members of the committee, others which other Members of the Senate raised. They will have their opportunity on the floor to address them.

Senator Muskie. I don't think, Mr. Chairman, we can open up consideration for more issues if we are to meet the leadership's schedule or even come close to it. The list of potential subjects is endless.

Mr. Billings. We will provide a list to each member of those that have been raised.

Senator Muskie. If the non-attainment issue is resolved, that would mean we would be able to report the bill to the floor.

Senator Randolph. We go beyond another step, and I don't use this occasion for carping criticism. But sometimes we are frustrated, if that is a word that is strong enough in this case. Do you realize that the priority with the Carter Administration in great degree, and with the Congress, was the employment act, the public works jobs bill, and we acted prompted, the House acted promptly. And now what happens? The House hasn't appointed conferees. We appointed them the day we passed our measure in the Senate.

And I am not directing my comments in any wrong sense, but I met with the chairman, Representative Johnson of California, usually a person that I thought would move forward. But no conferees are yet appointed.

I then addressed a letter to Chairman Johnson.

And, John, I will ask that that letter be sent to all members of the committee today.

I have tried to couch it in the right type presentation. But here we are with weeks going by, and we are going into construction season. You know that well, all who sit at this table. Weeks and weeks are going by. The projects are approved, hundreds and hundreds of them.

We just wonder what happens sometimes in a situation of this kind. I mention it only because we are trying to move this bill from the committee and to the floor. Sometimes having moved there, we are unable to move on that second level.

I never want to be unkind to the other body or people within it, and I am sure Chairman Johnson will not feel that I haveunduly spoken, but I do want to have a copy of the letter sent to you.

On another count, we haven't yet had the Administration send the nomination of the Federal Highway Administrator to the Hill. And yet we have to come in and discuss the highway budgeting program, which we did with an acting director. We have a problem of the allocation of funds. And here again it is construction season, very important to some States in connection with the program.

Senator Bentsen is well aware of this situation. I don't know whether he can unpry that nomination to the Senate. It comes before this committee.

On these discordant notes, I wish you a happy afternoon. We will meet tomorrow morning at 9:30.

(Whereupon, at 12:10 p.m., the committee recessed, to reconvene at 9:30, Tuesday, March 29, 1977.)